

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.11962 OF 2005

16.9.2005

Between:

N.Kalyani, W/o.Achaiah, C.Kothapalli Village,
Chapala Madugu Post, Pullalacheruvu Mandal,
Prakasam District.

... Petitioner.

AND

1. The District Collector, Prakasam District, Ongole.

And others.

... Respondents.

ORDER:

The petitioner was appointed as fair price shop dealer (FPS dealer) of C.Kothapalli village in Prakasam District in 1996. In July, 2004, the Mandal Revenue Officer sent a report to the third respondent alleging that the petitioner has committed irregularities. Based on the said report, the third respondent initiated action and suspended the authorization of the petitioner. A show cause notice was issued. Aggrieved by the same, the petitioner preferred an appeal before the second respondent who remanded the matter on 01.09.2004 to the third respondent to complete the enquiry and dispose of the matter within a period of one month. The petitioner submitted explanation and after considering the same, the petitioner's authorization was cancelled by the third respondent by proceedings dated 09.10.2004. Aggrieved by the same, the petitioner filed appeal before the second respondent who dismissed the same on 17.02.2005. The petitioner then filed revision petition before the first respondent. By proceedings dated 29.05.2005, the revisional authority also dismissed the revision petition. In this writ petition, the order of the first respondent is challenged.

It is the case of the petitioner that she has been discharging the duties as FPS dealer to the satisfaction of all and that due to change in the political scenario, persons belonging to ruling party are bent upon removing the petitioner as FPS dealer, and that due to their machinations, the enquiry was initiated by the appointing authority resulting in cancellation of the authorization. The petitioner also alleges that due to political reasons, the second respondent entertained an application filed by three cardholders who filed a false complaint against the petitioner, impleaded them and passed orders taking an erroneous view. The petitioner also points out that when she filed an application for stay before the

revisional authority, necessary orders were not passed, as a result of which the fourth respondent appointed the fifth respondent as temporary FPS dealer. The petitioner, therefore, alleges that all the authorities are predetermined to cancel the authorization of the petitioner acting to the tunes of local political leaders who are interested in getting their people appointed as FPS dealer of C.Kothapalli village. The petitioner also alleges that she is maintaining sales registers and stock registers which would prove the allegations wrong.

The third respondent in his counter affidavit states as follows. Some of the cardholders of the village filed petition before Revenue Divisional Officer, Markapur alleging that M.Atchiah, husband of the petitioner, is selling kerosene at Rs.12/- in stead of Rs.9.50 ps; rice at Rs.6.50 ps in stead of Rs.5.25 ps, and sugar at Rs.15/- per kilo gram in stead of Rs.13.50 ps, and that essential commodities are not property distributed. They requested to take necessary action against the petitioner. The petition was sent to the Mandal Revenue Officer, Pullalacheruvu for enquiry and report. After doing so, the Mandal Revenue Officer submitted report stating that the petitioner is running the fair price shop through her husband Atchiah, that he is attending to fair price shop in leisure time after completing his field work and that he is selling essential commodities like kerosene, rice and sugar at higher prices. Based on the report, the authorization of the petitioner was suspended and a show cause notice was issued framing two charges, namely, the petitioner is running fair price shop through her husband, who opens the shop at his leisure causing inconvenience to cardholders and therefore she violated conditions 4(1)(2) of authorisation and secondly, the petitioner did not file demand draft within time and selling the essential commodities at higher rates violating condition No.7 of authorization. The petitioner submitted explanation, which is not convincing. The petitioner was also issued a notice on 01.09.2004 directing her to appear before the Revenue Divisional Officer. Subsequently, after considering the explanation, her authorization was cancelled. The other allegations made by the petitioner are denied.

During the pendency of the proceedings, Ch.Srinivasa Rao, a resident of C.Kothapalli village was appointed as temporary FPS dealer. He was impleaded as party respondent and he also filed a counter affidavit opposing the writ petition.

The learned counsel for the petitioner, Mr.Brahma Reddy, submits that the basis for initiating enquiry by Revenue Divisional Officer is the report of the Mandal Revenue Officer, which was not furnished to the petitioner before issuing show cause notice and therefore the enquiry is vitiated. Secondly, he submits that there was no complaint made by the cardholders and therefore the allegations made in the show cause notice are not correct. While the matter is pending, the petitioner filed W.V.M.P.No.24244 of 2005 praying this Court to receive reply affidavit, third party affidavit and additional affidavit along with representations in Telugu. This representation is signed by 185 villagers of C.Kothapalli, who are allegedly cardholders. In sum and substance, they allege that no cardholder gave a complaint against the petitioner and that Bathula Guravamma, Chiradala China Venkataramaiah and China Mantru Naik never signed the complaint and that their signatures were forged. They also allege that the petitioner is discharging their

duties as FPS dealer without causing any inconvenience to the cardholders.

The Learned Government Pleader for Civil Supplies and Ms.K.Aruna, learned counsel for fifth respondent contend that the original authority followed the procedure contemplated under A.P.State Public Distribution System Control Order, 2001 (Control Order, for brevity) and by non-supply of the report of the Mandal Revenue Officer, no prejudice is caused to the petitioner. They also contend that the additional evidence sought to be brought on record by the petitioner by way of third party affidavit cannot be looked into by this Court especially when such evidence was not produced by the petitioner while the matter was pending before the Revenue Divisional Officer, Joint Collector and District Collector.

As per clause 5(4) of the Control Order, the appointing authority i.e. Revenue Divisional Officer may suspend or cancel the authorization of FPS dealer after making such enquiry as may be deemed necessary and by recording reasons for cancellation/suspension of authorization. Clause 5(4) authorizes appointing authority to take action even *suo motu*. Except stipulating that appointing authority can cancel the authorization “after making such enquiry”, it is silent as to nature of enquiry.

In **M.Sadasiva Sekhar v District Collector, Kurnool**, this Court interpreted clause 3(4) of A.P.Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. The said provision is *in pari materia* with clause 5(4) of the Control Order. This Court held that conducting enquiry and giving opportunity of hearing does not necessarily mean recording evidence or giving an opportunity of personal haring. Dealing with this aspect, it was laid down therein as under.

The above sub-clause confers power on the appointing authority to suspend or cancel the authorization subject to conducting enquiry and recording reasons. The phrase “*after making such enquiry as may be deemed necessary*” makes it plain that discretion is vested in the appointing authority as to the nature, method and manner of conducting enquiry as is deemed necessary. There can be no hard and fast rule that in every case of suspension or cancellation, the appointing authority should afford an opportunity of being heard to the fair price shop dealer {See **M.P.Industries Ltd. v Union of India (AIR 1966 SC 671)**}. No doubt, the word “enquiry” into the allegations against a dealer has a broad connotation and takes in its fold an opportunity of filing explanation to the parties and/or affording a right of hearing. Because the legislature used the words “such enquiry as may be deemed necessary”, we have to give a restricted meaning to the phrase and leave it to the appointing authority whether or not the fair price shop dealer should be heard. It is not possible to accept the submission of the learned Counsel for the petitioner and supply the words so as to make sub-clause (4) of Clause 3 read providing opportunity of being heard.

It was also held that even where the appointing authority does not afford an opportunity of being heard to FPS dealer, such an order cannot be invalidated. In such a case, it is for the FPS dealer to plead and prove the prejudice caused by violation of any principle of fairness or natural justice. Therefore, the submission of

the learned counsel for the petitioner that due to non-supply of the report of the Mandal Revenue Officer, the enquiry is vitiated, cannot be accepted. As held by this Court in **Sadasiva Sekhar**'s case, the FPS dealer has not pleaded nor proved the prejudice caused to her.

Further, a reading of the Order of the Revenue Divisional Officer would show that initially the cardholders gave a complaint, based on which the Revenue Divisional Officer called for the report of Mandal Revenue Officer. After conducting enquiry, the Mandal Revenue Officer submitted report, based on which action was initiated. At no point of time, the petitioner raised any objection regarding non-supply of the report of Mandal Revenue Officer. The submission is, therefore, misconceived and cannot be accepted.

It is needless to point out that the writ petitions are decided by the High Court based on the affidavit averments. It is no doubt true that it is always permissible for the Court to take into consideration the subsequent events also which have a bearing on the subject. It does not however mean that an aggrieved person as an after thought can bring in evidence which he/she never attempted to bring in when the proceedings were pending before the authorities whose orders are impeached in the writ petition. For this reason, this Court finds considerable force in the submission made by the learned Assistant Government Pleader and learned counsel for fifth respondent that the additional evidence by way of third party affidavit filed by the petitioner cannot be looked into by this Court.

In the result, for the above reasons, the writ petition is devoid of any merit and is accordingly dismissed. The interim orders passed stand vacated.

(V.V.S.RAO,J)

.09.2005

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